

**DETERMINATIONS OF NO JURISDICTION FOR ISOLATED, NON-NAVIGABLE, INTRA-STATE WATERS
RESULTING FROM U.S. SUPREME COURT DECISION IN SOLID WASTE AGENCY OF NORTHERN COOK
COUNTY V. U.S. ARMY CORPS OF ENGINEERS**

DISTRICT OFFICE: Los Angeles District

FILE NUMBER: 2006-00913-AOA

REGULATORY PROJECT MANAGER: Aaron O. Allen, Ph.D. **Date:** April 5, 2006

PROJECT REVIEW/DETERMINATION COMPLETED: **In the office (Y/N)** Y **Date:** April 5, 2006
At the project site (Y/N) Y **Date:** April 3, 2006

PROJECT LOCATION INFORMATION:

State: California

County: Los Angeles

Center coordinates of site by latitude & longitudinal coordinates: 34-31-58 & -117-52-01

Approximate size of site/property (including uplands & in acres): 544

Name of waterway or watershed: Big Rock Creek

SITE CONDITIONS:

Type of aquatic resource ¹	0-1 ac	1-3 ac	3-5 ac	5-10 ac	10-25 ac	25-50 ac	> 50 ac	Linear feet	Unknown
Lake									
River									
Stream									
Dry Wash		X							
Mudflat									
Sandflat									
Wetlands									
Slough									
Prairie pothole									
Wet meadow									
Playa lake									
Vernal pool									
Natural pond									
Other water (identify type)									

¹Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

Migratory Bird Rule Factors ¹ :	If Known		If Unknown Use Best Professional Judgment		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able To Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?	X				
Is or would be used as habitat by other migratory birds that cross state lines?	X				
Is or would be used as habitat for endangered species?		X			
Is used to irrigate crops sold in interstate commerce?		X			

¹Check appropriate boxes that best describe potential for applicability of the Migratory Bird Rule to apply to onsite, non-jurisdictional, isolated, non-navigable, intra-state aquatic resource area.

TYPE OF DETERMINATION: Preliminary _____ Or Approved X

ADDITIONAL INFORMATION SUPPORTING NJD (e.g., paragraph 1 – site conditions; paragraphs 2-3 – rationale used to determine NJD, including information reviewed to assess potential navigation or interstate commerce connections; and paragraph 4 – site information on waters of the U.S. occurring onsite): The applicant proposes to impact 1.51 acres of isolated unnamed desert washes to mine aggregate material to support future residential development in Los Angeles County on a 544-acre site in unnamed tributaries to Big Rock Creek, east of the City of Palmdale, Los Angeles County, California. Big Rock Creek is a relatively large isolated stream system that originates on the north side of the San Gabriel Mountains and flows north towards Edwards Air Force Base, terminating in Rosamond/Rogers Dry Lake. In the upstream portion of the watershed, Big Rock Creek is a perennial stream that supports substantial aquatic and riparian habitat. Once it emerges from the mountains onto the alluvial plain in the Mojave Desert, the stream exhibits an ephemeral/intermittent flow regime as the depth to groundwater increases. Due to the intermittent/ephemeral flow regime, the downstream reaches support only seasonal aquatic habitat and scattered desert scrub vegetation. The magnitude of storm flows in Big Rock Creek varies from

a low of 50 to 100 cubic feet per second (cfs) in dry years to 23,000 cfs during very large storm events (50 to 100-year event). In terms of substantial interstate commerce connections, there is no evidence that water from Big Rock Creek is utilized for industrial purposes, recreation, fish or shellfish production that generates interstate commerce and there is also no evidence of navigation, even small rafts or canoes, in Big Rock Creek. Prior to the SWANCC decision, the Corps had exerted jurisdiction over Big Rock Creek, its tributaries and adjacent wetlands using migratory birds as the interstate commerce connection. The upper watershed supports well developed riparian habitat for migratory birds and the Corps has documented substantial use of Rosamond Dry Lake by a number of migratory bird species during the late winter and early spring. However, based on the above information, Big Rock Creek is non-navigable isolated water body that does not exhibit substantial interstate commerce and, therefore, is no longer subject to the Corps jurisdiction with the SWANCC Supreme Court decision. The Corps previously determined in 2005 that Big Rock Creek was no longer subject to Corps jurisdiction with the SWANCC decision.